

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

PJM Interconnection, L.L.C.

Docket No. ER05-120-000

ORDER CONDITIONALLY ACCEPTING FILING

(Issued December 28, 2004)

1. In this order, the Commission conditionally accepts and suspends, subject to refund, a tariff provision filed by PJM Interconnection, L.L.C. (PJM) that provides a mechanism by which the costs of member defaults will be allocated among PJM's remaining members. This order benefits customers by ensuring an equitable distribution of default costs.

Background

A. PJM's filing

2. When a PJM member defaults on its obligation to pay PJM for the service it has taken, PJM allocates those unpaid bills among the remaining PJM members. Currently, PJM's tariff allocates such default costs among its members by a default allocation mechanism based on each member's weighted interest.¹

3. On November 1, 2004, PJM submitted a new default allocation mechanism, which it seeks to make effective on January 1, 2005. PJM proposes to allocate default costs to its members according to a formula under which 90 percent of the total default costs would be allocated to members based on each member's gross activity within PJM. The remaining 10 percent is assessed to PJM members in an amount not to exceed \$10,000

¹ The current formula creates a "weighted interest" for each member based on the member's peak demand, amount of installed generation, transmission circuit miles, and membership.

per member during each calendar year. If the \$10,000 cap is met, any excess default is allocated according to gross activity. PJM states that each member's "gross activity" is determined by adding the credits and charges for each Activity Line Item stated on PJM's monthly bills for the month the default occurs and the previous two months. PJM also states that, when a transmission owner's gross activity is measured, that measurement will exclude charges and credits for Network Integration Transmission Service (NITS) that the transmission owner takes to serve Network Load in its own zone.

4. PJM states in its filing that the Commission had justified [PJM's] gross activity methodology as a basis for its default allocation in an order issued on September 23, 2003, in Docket No. ER03-1117-000.² PJM states that although the Commission rejected its proposed tariff revisions relating to a member's default in that proceeding,³ the Commission's concern in the proceeding rested exclusively on the "risk profile" factor of the formula proposed in that docket. PJM contends that the formula proposed in the instant filing removes this point of concern and overwhelmingly bases default allocation on the approach previously sanctioned by the Commission – use of the gross activity metric. PJM contends that the only qualification to this approach is that the formula operates to place a very modest and capped exposure on each member resulting from its status as a member on the day in which a default is declared.

B. Protests

5. PJM's filing was noticed in the *Federal Register*, with protests, comments and notices of intervention due to be filed on November 22, 2004.⁴ Timely motions to intervene were filed by Allegheny Power Companies⁵ and Consumers Energy Company. The PSEG Companies⁶ filed a motion to intervene out of time. Timely motions to intervene and protests were filed by the Coalition of Municipal and Cooperative Users of New PJM Companies' Transmission (Muni-Coop Coalition) and American Municipal Power – Ohio, Inc. (AMP-Ohio) (collectively, the protesters). The protesters argue that it

² *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,321 (2003) (September 23 Order).

³ *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,116 (2004) (August 2 Order).

⁴ 69 Fed. Reg. 67343 (2004).

⁵ Allegheny Power and Allegheny Energy Supply Company, LLC (Allegheny Power Companies).

⁶ PSEG Energy Resources & Trade LLC and Public Service Electric and Gas Company (PSEG Companies).

is inequitable for PJM to define "gross activity" in such a way as to exclude activity of the transmission owners within their own zones. The protestors claim that PJM will cite, as a reason for excluding the NITS charges of the transmission owners from the gross activity methodology, to a 1997 order approving PJM's formation as an Independent System Operator (ISO), in which the Commission ruled that transmission owners would not be required to pay for service on their own transmission facilities under the PJM Transmission Tariff, because "it is appropriate . . . not [to] require the [transmission owner] to effectively pay itself for transmission service over its own transmission system."⁷ The protestors further assert that PJM's citation to the PJM ISO Order as authority for this choice is incorrect, because the Commission merely found that, since transmission owners had already paid the embedded costs of the systems that they were contributing to PJM, they should not be required to pay again for service on those facilities. Protesters claim that this is significantly different from excluding any transmission owner's activity on its own system from the calculation of "gross activity" for the purpose of allocating default costs.⁸

6. Protesters further argue that this exclusion unfairly allows transmission owners to pay a smaller share of default costs, relative to their activity on the system, than Transmission Dependent Utilities (TDUs) such as the protestors. Muni-Coop Coalition states that a transmission owner gets the same benefits from PJM membership that a TDU gets, and thus, protestors assert that there is no basis for allowing such preferential treatment for transmission owners.

C. PJM's answer

7. PJM filed an answer to the protests, stating that in its September 23 Order in Docket No. ER03-1117-000, the Commission had already approved PJM's "gross activity" definition. PJM further states that its proposal enjoys extensive stakeholder support, and that in any case, the net shift of a default assessment between transmission owners and their affiliates, and other market participants, would have a *de minimis* effect. PJM states that including the charges and credits for NITS to serve Network Load in each transmission owner's zone would shift only about 2.8 percent of total activity from other participants to transmission owners and their affiliates.

⁷ *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 at 62,250 (1997) (PJM ISO Order).

⁸ AMP-Ohio protest at 3-4; Muni-Coop Coalition protest at 2.

Discussion**A. Procedural matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission finds that granting PSEG Companies' late-filed motion to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on existing parties. Therefore, for good cause shown, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2004), we will grant its motion to intervene.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PJM's answer because it has provided information that assisted us in our decision-making process.

B. Analysis

10. The Commission accepts and suspends PJM's Default Allocation Methodology, subject to refund, to become effective on January 1, 2005, subject to the removal of the exclusion of a transmission owner's charges and credits for NITS related to Network Load in its zone from the determination of a member's gross activity. PJM is required to make a filing within 30 days to revise its tariff.

11. PJM asserts that the gross activity factor, and the exclusion language, was previously accepted in the Commission's September 23 Order in Docket No. ER03-1117-000. The Commission, however, did not accept this filing. In its September 23 Order, the Commission did not specifically address the merits of PJM's gross activity proposal, but rather found that the default allocation mechanism PJM was then proposing, which allocated default costs to members based in part on each member's gross activity, and in part on each member's risk profile, could not be accepted unless PJM either removed the risk profile element from its allocation methodology, or provided an acceptable explanation for its use of the risk profile element. PJM chose to provide an explanation, which was filed in Docket No. ER03-1117-001, but the Commission did not consider that explanation adequate, and rejected the filing.⁹

⁹ August 2 Order at P 6, emphasis added.

12. Therefore, this methodology was never accepted and PJM in this new section 205 filing bears the burden of justifying its proposal.

13. While the Commission accepts the use of the gross activity factor as the basis for the default allocation methodology, it agrees with the protesters that PJM has not adequately supported the exclusion of charges and credits for transmission owners for NITS in their own zones compared to similar NITS service provided by TDUs who would not receive such exclusion for their service in the gross activity calculations. Although in the PJM ISO Order, the Commission approved a tariff provision under which transmission owners do not "pay themselves" for transmission service over their own transmission facilities, that service is still scheduled with PJM, occurs in a PJM zone, and represents activity of that transmission owner in PJM. The transmission owners enjoy numerous benefits from their membership in PJM and as a result they must also equitably share costs of such membership. In a recent *NYISO* order, the Commission stated that the theory underlying a default allocation methodology based on gross activity is that those who benefit most from activity within a transmission organization should pay a larger share of the organization's default costs.¹⁰ The PJM proposal allows a transmission owner's gross activity to be calculated in such a way that its activity within its own zone is not considered, which in turn, lowers its default allocation responsibility; yet, this exclusion does not reflect any reduction in the benefits that the transmission owner receives from the activity in its own zone and throughout PJM. The Commission, therefore, finds such exclusion to be unduly discriminatory.

14. PJM states that the effect of the net shift of a default assessment between transmission owners and their affiliates, and other market participants would be "*de minimis*." The fact that the net cost shift may be *de minimis* does not justify disparate treatment of different kinds of entities that PJM has failed to support.

15. Therefore, PJM is directed to make a compliance filing, within 30 days of the date of this order, removing the aforementioned exclusion language from its default allocation methodology.

¹⁰ *New York Independent System Operator, Inc.*, 104 FERC ¶ 61,311 (2003).

The Commission orders:

PJM's filing is accepted and suspended, subject to refund, to become effective January 1, 2005, subject to the removal of the language excluding activity on a transmission owner's own system from its definition of "gross activity," as discussed above. PJM must file within 30 days of the date of this order to revise its tariff accordingly.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.